

BEFORE THE COMMISSIONER OF INSURANCE
STATE OF COLORADO

Order No. ⁰⁻¹²⁻⁰¹⁵ RE 4866

AMENDED FINAL AGENCY ORDER

IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF LEXINGTON
NATIONAL INSURANCE CORPORATION

Respondent.

THIS MATTER comes before Jim Riesberg, Commissioner of Insurance for the State of Colorado ("Commissioner"), as a result of a market conduct examination conducted by the Colorado Division of Insurance ("Division") of Lexington National Insurance Corporation ("Lexington"), pursuant to applicable provisions of the Colorado Insurance Code, including §§ 10-1-201, 10-1-202, 10-1-203, 10-1-204, 10-1-205, 10-3-1106, 12-7-108(6), and 12-7-113, C.R.S.

The Commissioner has considered and reviewed the market conduct examination report dated September 13, 2010, relevant examiners' work papers, all written submissions and rebuttals, the recommendations of staff, and the provisions of the Stipulation for Entry of Amended Final Agency Order ("the Stipulation"). In accordance with the Stipulation, this Amended Final Agency Order ("Amended FAO") supersedes Final Agency Order O-11-057 ("FAO57").

The Commissioner finds and orders as follows:

FINDINGS OF FACT

1. At all relevant times, Lexington was licensed by the Division as a bail bond and fidelity surety company.
2. In accordance with the Colorado Insurance Code, the Division completed a market conduct examination ("MCE") of Lexington on July 14, 2010. The period of examination was from January 1, 2008 through December 31, 2008.
3. In conducting the MCE, the examiners endeavored to observe those guidelines and procedures set forth in the most recent available edition of the Market Regulation Handbook adopted by the National Association of Insurance Commissioners. Marcy Morrison, who was the Commissioner of Insurance at the time of entry of FAO57, also employed other guidelines and procedures that she deemed appropriate, pursuant to §10-1-204, C.R.S.

4. On September 13, 2010, the Division sent a Market Conduct Examination Report ("MCE Report") of the findings and recommendations of the MCE to Lexington. The MCE Report set forth the Division's findings of fact and issues identified by the Division concerning the MCE and made recommendations regarding the same.
5. On October 13, 2010, Lexington timely filed its submissions and rebuttals ("October Submission") to the Division in response to the MCE Report. The October Submission addressed the issues and recommendations set out in the MCE Report and further provided Lexington's position regarding those issues and recommendations.
6. On November 12, 2010, Commissioner Marcy Morrison, after consideration of all the information, and the October Submission provided, issued Final Agency Order O-11-057 ("FAO57") adopting the MCE Report ("Adopted MCE Report"). The Adopted MCE Report set forth the Division's findings of fact concerning Lexington's compliance and made recommendations regarding the same.
7. FAO57 and the Adopted MCE Report were transmitted to Lexington on November 12, 2010 by the Division. On November 12, 2010 the Division also sent a letter to Lexington requesting that certain actions be taken concerning the findings and recommendations in the Adopted MCE Report as incorporated in FAO 57.
8. The findings of the Adopted MCE Report are solely comprised of facts appearing upon the books, records, or other documents of Lexington or made in statements of its agents or other persons examined concerning Lexington's affairs. The Adopted MCE Report contains conclusions and recommendations that the examiners found reasonably warranted based upon the facts.
9. In FAO57, Commissioner Morrison assessed a civil penalty of \$332,000.00, along with a surcharge of \$7,500 for a total amount of \$339,500 to be paid by Lexington as a result of the findings of the Adopted Report. Commissioner Morrison also ordered that certain remedial or corrective action be taken by Lexington to address those findings.
10. On December 3, 2010, Lexington, through legal counsel, requested a hearing as to FAO57 and the Adopted MCE Report.
11. On December 9, 2010, the Commissioner and Division, through their legal counsel, denied Lexington's Request for Hearing and advised of the appeal procedures that were deemed applicable to the FAO and Adopted MCE Report.
12. On December 10, 2010, Lexington filed a Complaint in the Denver District Court (Case No. 2010CV9602), seeking declaratory relief, an injunctive and judicial

review as to FAO57 and other matters related to the MCE and the Adopted MCE Report, naming the Commissioner and the Division as defendants. The Defendants then filed an Answer to the Complaint on December 29, 2010. Since that time, the parties have filed motions in the District Court case and been granted time to engage in settlement negotiations and to consummate a settlement.

13. On December 13, 2010, Lexington also filed a Notice of Appeal and Motion to Stay Execution and to Approve Amount of Supersedeas Bond in the Colorado Court of Appeals (Case No. 2010CA2607). On January 4, 2011, the Court of Appeals stayed payment of the fine by Lexington conditioned upon the filing of a supersedeas bond in the District Court securing payment of the fine.
14. The parties have filed a motion in the Court of Appeals case requesting a stay to engage in settlement negotiations and to consummate a settlement. On July 12, 2011 the Court of Appeals entered an Order granting a 30 day stay of the appellate proceedings.


CONCLUSIONS OF LAW AND ORDER

15. This Amended FAO, concerning the Adopted MCE Report, the MCE and all matters related thereto, supersedes FAO57.
16. The Division's findings of fact, issues identified by the Division, and recommendations regarding the MCE are set out in the Adopted MCE Report.
17. The October Submissions setting forth Lexington's position regarding the Division's findings and recommendations of the MCE Report, have also been considered.
18. The Division and Lexington, in order to resolve all matters pertaining to FAO57, the Adopted MCE Report, the MCE and the pending litigation in Denver District Court and the Court of Appeals, entered into the July 11, 2011 Stipulation for Entry of Amended Final Agency Order ("Stipulation"), which Stipulation is now approved and incorporated herein by reference.
19. Lexington will undertake and complete, by December 31, 2011, all the procedure changes, modification of forms, training and supervision of agents, and other remedial measures set out in the Adopted MCE Report.
20. No later than August 29, 2011, Lexington shall submit a detailed written compliance plan ("Compliance Plan") to the Division identifying the corrective actions Lexington will take to come into full compliance with all issues set forth in the Amended FAO and Adopted MCE Report.

21. On September 29 and September 30, 2010 the parties respectively signed a Stipulation for Entry of Final Agency Order ("September 30, 2010 Stipulation") for matters that were related to the above referenced MCE, but which were not included in the MCE Report or Adopted MCE Report. A Final Agency Order O-11-047, adopting the September 30, 2011 Stipulation was entered on October 1, 2010 ("FAO 47").
22. Lexington's Compliance Plan shall provide a detailed summary of how it has, or how it shall comply with the specific terms set forth in FAO 47, which is hereby incorporated herein.
23. No later than December 31, 2011, Lexington shall come into full compliance with §§ 10-2-704, 12-7-106(1)(g), C.R.S., and Colorado Insurance Regulation 1-2-1. Specifically, Lexington shall ensure that each of its agents maintains all premiums, returned premiums and collateral monies in a fiduciary capacity as trust funds, held in a separate trust account and segregated from the agents own personal funds or business funds.
24. Lexington's Compliance Plan shall include detailed identification of the manner in which Lexington shall come into compliance with §§ 10-2-704, 12-7-106(1)(g), C.R.S., and Colorado Insurance Regulation 1-2-1 in regards to each Lexington agent meeting his or her fiduciary responsibilities to maintain separate accounts for collateral and premium monies.
25. Lexington's Compliance Plan shall also outline the procedure it will undertake to come into compliance with all issues identified in the Adopted MCE Report, including but not limited to all the procedure changes, modification of forms, training and supervision of agents, and other remedial measures , as well as the establishment of agent fiduciary accounts as set forth above.
26. The Commissioner shall approve or disapprove Lexington's Compliance Plan no later than September 19, 2011. In the event the Commissioner identifies deficiencies in Lexington's Compliance Plan he or his designee shall set forth such deficiencies in a written communication to Lexington no later than September 19, 2011. Lexington shall amend its Compliance Plan no later than September 30, 2011. Any Amended Compliance Plan submitted by Lexington shall remediate all deficiencies identified by the Commissioner.
27. Within 30 days of December 31, 2011, Lexington is ordered to submit written confirmation to the Division, through a statement signed by an officer of the company, attesting that to the best of that officer's information, knowledge and belief, that Lexington has completed all the procedure changes, modifications of forms, training and supervision of agents, fiduciary account compliance and other remedial measures set out in the Adopted MCE Report and the approved Compliance Plan.

28. Lexington is further ordered (and it has agreed) to pay a total civil penalty of One Hundred Fifty Thousand Dollars (\$150,000.00) to the Division. This civil penalty shall be paid to the Division within fourteen (14) days of the date this Amended FAO approving the Stipulation is signed. Upon payment of this amount, the Commissioner and the Division agree to sign all necessary papers to release and return to Lexington, the supersedeas bond filed in the Denver District Court.
29. Pursuant to §10-1-205(4)(a), C.R.S., within sixty (60) days of the date of the Amended FAO, Lexington shall file affidavits executed by each of its directors stating under oath that they have received a copy of the Adopted MCE Report and this Amended FAO.
30. Subject to the terms of the Stipulation, this Amended FAO shall not prevent the Division from commencing future agency action relating to: (1) conduct of Lexington not specifically addressed in the Adopted MCE Report; (2) conduct not resolved according to the terms and conditions of the Stipulation, the September 30, 2010 Stipulation, and this Amended FAO; or (3) conduct occurring before or after the examination period of January 1, 2008 through December 31, 2008, however, the Division shall not commence any future MCE of Lexington before July 1, 2012 and such MCE shall not be for an examination period commencing before July 1, 2011.
31. Notwithstanding the foregoing, the Division will conduct future market conduct examination(s) of Lexington's bail bond business and Lexington agrees that it will pay for the costs of said examination(s). Any future market conduct examination(s) shall not commence before July 1, 2012 and shall not be for an examination period commencing before July 1, 2011.
32. Copies of the Adopted MCE Report and this Amended FAO will be made available to the public no earlier than thirty (30) days after the date of this Amended FAO, subject to the requirements of §10-1-205, C.R.S.
33. 24. Failure by Lexington to comply with the terms of this Amended FAO may result in additional actions, penalties and sanctions, as provided for by law. Nothing in this Amended FAO shall affect Lexington's rights to injunctive or other relief permitted by law in the event that the Division violates any of the terms of the Stipulation or this Amended FAO.

WHEREFORE: It is hereby ordered that the findings of fact and conclusions of law contained in this Amended FAO are hereby adopted and filed and made an official record of this office this 18th day of July, 2011.



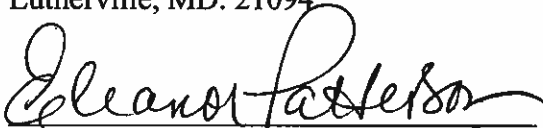
Jim Riesberg
Commissioner of Insurance

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of July, 2011, I caused to be deposited the
**AMENDED FINAL AGENCY ORDER NO. 0-12-01 IN THE MATTER OF THE
MARKET CONDUCT EXAMINATION OF LEXINGTON NATIONAL
INSURANCE COMPANY**, in the United States Mail via certified mailing with postage
affixed and addressed to:

Brian Frank
Lexington National Insurance Company
200 E. Lexington St. Suite 501
Baltimore, MD 21202

Brian Frank
Lexington National Insurance Company
P.O. Box 6098
Lutherville, MD. 21094


Market Regulation Administrator